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October 18, 2007

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: November 29, 2006

Case Number: TSO-0455

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization<sup>1</sup> under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

**I. Background**

The individual is an employee of a DOE contractor. Due to a domestic incident in July 2005 that led to the individual being taken by police to a mental hospital, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on May 19, 2006. *See* DOE Exhibit 8. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on July 28, 2006. *See* DOE Exhibit 3. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the

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<sup>1</sup> Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, two co-workers, a friend, a psychiatrist who had treated the individual, a psychologist, and the DOE consultant psychiatrist. The DOE counsel and the individual, who was represented by counsel, submitted exhibits prior to the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern in this case has not been sufficiently resolved.

## **II. Analysis**

### ***A. The Basis for the DOE's Security Concern***

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has an illness or mental condition of a nature which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in his judgment or reliability. DOE Exhibit 1 (citing 10 C.F.R. § 710.8(h)). The Notification Letter cites multiple diagnoses of the individual by a number of doctors, most recently the DOE consultant psychiatrist's diagnosis of the individual as suffering from Cyclothymic Disorder; Major Depressive Disorder, without psychotic features, in partial remission; and Borderline Personality Traits. Both the Notification Letter and the report of the DOE consultant psychiatrist allege that the individual (1) was detained for observation after he threatened suicide and tried to strangle his wife during an incident on July 23, 2005; (2) threatened suicide on at least three occasions; (3) used a virus to erase files from a computer at work; and (4) brought a shotgun onto the premises of a DOE facility on July 27, 2005, where he told a co-worker that he was going to commit suicide.

Much of the testimony at the hearing centered on whether the DOE consultant psychiatrist correctly diagnosed the individual's mental illness, particularly with respect to whether the individual exhibits certain of the traits of Borderline Personality Disorder set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), specifically:

- Frantic efforts to avoid real or imagined abandonment.
- Recurrent suicidal behavior, gestures, or threats, or self mutilated behavior.
- Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
- Chronic feelings of emptiness.

A psychiatrist who treated the individual from February 2004 until his retirement in June 2006 testified that he did not believe the individual had "borderline personality disorder, because if he had

that disorder, he would be doing some of the kinds of things during the two years that I saw him that borderline patients do . . .” Tr. at 284. Similarly, the psychologist who evaluated the individual and testified on his behalf at the hearing did not believe that the behaviors exhibited by the individual rose to the level of a borderline personality disorder.

[F]irst of all, appreciate the significance and the magnitude of the difficulties that borderline individuals face. These are individuals who have significant difficulties in virtually every area of their life. Oftentimes, they find it impossible to maintain steady employment and certainly come to the attention of a wide variety of individuals for their behaviors.

[The individual], by contrast, actually is quite stable.

Tr. at 188.

Rather, both the treating psychiatrist and the psychologist opined that the individual suffered from a mood disorder, Tr. at 187, 263, the psychologist testifying that the four characteristics of borderline personality disorder identified by the DOE consultant psychiatrist “seem to me to be either subsumed by the primary diagnosis, in my opinion, of major depression, or subsumed by the diagnosis of cyclothymic personality, for example.” Tr. at 189.

In evaluating these varying diagnoses, and in particular their significance as security concerns, it is helpful to consider them in the context of the factual allegations against the individual, at least two of which are in dispute. Based on my findings below, whether the individual's behavior is due to a mood disorder or a personality disorder, that behavior raises significant concerns regarding the individual's suitability to hold a security clearance.

### ***1. Events Leading to Individual's Admission to a Mental Hospital for Observation***

The Notification Letter alleges that, on July 23, 2005, the individual was detained for observation after he threatened suicide and tried to strangle his wife. There is no dispute that the individual was behaving very irrationally during this incident, and that this behavior led to his detention at a mental hospital for between one and two days. The specific events of that took place that night are less clear, particularly whether the individual in fact assaulted his wife and, if so, with what intent.

However, I do not find it necessary to fully resolve the disputed facts, as I was persuaded by evidence that the individual's behavior was the product of a confluence of factors that is very unlikely to be repeated. Specifically, the individual had been in a great deal of pain the week preceding the event, due to his reaction to a pneumonia vaccination. As a result, the individual, who has suffered from chronic pain since a motorcycle accident in 1991, was now in even greater pain and was unable to sleep for several nights in a row. Tr. at 82-82, 248. At this time, the individual had been prescribed Valium, Lorcet, and Ambien. He testified that on July 23, 2005, he had taken the maximum prescribed dosage of his medications, as well as NyQuil to “drain my sinuses and settle my throat.” Tr. at 360. After taking a second 10 mg dose of Ambien, the individual testified that he remembers “just brief flashes and images” from that night, until he found himself in a mental hospital. Tr. at 361. Although the DOE consultant psychiatrist was of the opinion that the individual's mental illness contributed to his behavior on this night, based on the testimony of both

the psychologist and the DOE consultant psychiatrist, I am convinced that, but for the combination of the individual's severe pain, sleep deprivation, and several medications, the events of July 23 would not have taken place. Tr. at 96, 160, 239.

## ***2. Allegations of Repeated Suicide Threats***

Regarding the allegations of repeated suicide threats, the individual specifically denies that one took place, and attributes the other two to misunderstandings of his intent. In one case, the individual is alleged to have pointed a gun to his head during an argument with his spouse and stated, "Dead dads don't pay." DOE Exhibit 6 at 10 (June 12, 1996 notes of counselor seen by individual and wife). In describing another instance in a 2000 Personnel Security Interview, the individual said that he "considered suicide . . . based upon my wife insisting that we get counseling and that it was counseling or divorce." DOE Exhibit 9 at 15. "And my explanation to her was, 'Yeah, counseling's fine, but I won't accept the divorce, I'll take my life first.'" *Id.* Most recently, on July 27, 2005, the individual was alleged to have threatened suicide after showing up at a DOE facility with a shotgun, an allegation supported by a contemporaneous written report of security personnel at the DOE facility stating that one individual heard the individual make the threat, and a second heard him confirm that he had made the threat. DOE Exhibit 18 at 2, 3.

The individual offered his own explanation for each of these events at the hearing. He claimed that the "Dead dads" comment, which he did not deny, was made when he was cleaning a gun and his wife started an argument with him about finances. He testified that he was unemployed at the time, and that he was trying to express "that I'm doing everything that I can; that if I'm dead -- that if I've worked to the point where I can no longer work, what benefit is that for my family or for myself." Tr. at 345-46. Asked at the hearing about the statement that he would take his own life before accepting divorce, the individual stated, "That's a metaphor. The metaphor of divorce and suicide." Tr. at 413. Finally, he denies threatening suicide on July 27, 2005, instead claiming that he had only said he would use a shogun if he were to commit suicide. Tr. at 382, 440.

I find that the individual's explanations of these three incidents are simply not credible.<sup>2</sup> Rather, each of them appears to be post hoc justifications and/or minimizations of actual suicide threats. In their testimonies, both the individual's treating physician and the psychologist noted distinctions between suicidal ideation or thoughts, empty or manipulative suicide threats, and actions taken toward suicide or suicide attempts. While acknowledging that the individual had experienced thoughts of suicide, both stated they had not observed the individual make any suicide threats. Tr. at 294, 416. However, the record is clear that such threats were made, whether empty, metaphorical, manipulative, or real. Moreover, I was persuaded by the testimony of the DOE consultant psychiatrist that even a manipulative suicide threat raises questions about the judgment of the person making the threat. Tr. at 252 ("It obviously says bad things about the judgment, if you use -- if you raise the stakes that high that you're going to say, 'I'm going to kill myself if you leave.'"). While there is conflicting testimony as to whether these threats were the product of a mood disorder or a personality disorder, I am convinced that such threats are demonstrations of bad judgment brought on by mental illness, and therefore raise valid security concerns.

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<sup>2</sup> In the case of the written report of the alleged threat at a DOE facility, the individual presented testimony that effectively undermined the credibility of the first source in this report. *See, e.g.*, Tr. at 58-65. There was, however, no credible explanation for the report of the second source, who spoke to the individual that night and reported that the individual confirmed that he had threatened suicide.

### ***3. Alleged Malicious Use of a Computer Virus***

Of even greater concern is an allegation that the individual used a virus to erase files from a computer at work. The first source of the allegation is the following from the contemporaneous notes of a psychiatrist who was treating the individual in 1996: “Feels he’s self-destructive; used virus to erase files in computer at work.” DOE Exhibit 6 at 6. The individual denies having said this to his psychiatrist, offering as a possible explanation that he worked with computers at the time and that he might have been relating to his psychiatrist an incident where somebody called him and said “‘One of my ex-employees left a virus on my machine, and they were mad at me,’ and so I may have related that I went in and cleaned that up.” Tr. at 350, 351.

The individual also disputes the accuracy of the following passage from the July 31, 2006 report of the DOE consultant psychiatrist: “In our interview, [the individual] said that he had ‘unleashed something on someone at work,’ and had gotten revenge ‘by shutting down their system.’” DOE Exhibit 3 at 4. Instead, the individual recalls that the DOE psychiatrist asked him “would I put a virus on a computer, and I responded that I would put a virus on a computer under the correct circumstances, and that I will attack, scan and pull down any piece of computer infrastructure that is damaging the lab resources that I’m protecting.” Tr. at 351-352.

Again, I found the individual’s explanations to be lacking in credibility. Similar to the explanations of his reported suicide threats, the individual cites misunderstandings as the problem. While such a miscommunication is possible, I found the DOE psychiatrist’s testimony regarding his conversation with the individual to be more credible. Tr. at 480-81. Based upon that testimony, the DOE psychiatrist’s contemporaneous report, and the supporting evidence of the 1996 notes of the individual’s treating psychiatrist, I conclude that both reports are accurate, and it is likely that the virus incident took place. As for the security concern raised by this behavior, I agree with the assessment of the DOE counsel that if the incident took place, it “would be scarier than hell to let him go back to work.” Tr. at 250-51. I also was persuaded by the testimony of the DOE psychiatrist that this behavior was the product of the individual’s mental illness, Tr. at 250,<sup>3</sup> bringing it within the purview of 10 C.F.R. § 710.8(h).

### ***4. Taking a Shotgun and Ammunition to a DOE Facility***

Finally, there is the undisputed fact that the individual took a shotgun and ammunition onto the premises of a DOE facility, an act that the individual admits he knew was prohibited. Tr. at 281, 434. This incident took place on July 27, 2005, a little over two days after he was released from the mental hospital where he had been taken on the night of July 23. After being released from the hospital on July 25, the individual went back to his home and found that his wife and two children were not there. On July 27, police arrived to serve him with a restraining order requiring him to leave his house. The individual had purchased a shotgun that day, and while his family had been trained to safely use the weapons in their home, he did not feel comfortable leaving a new, unfamiliar gun in his house. He therefore told the police that he wanted to take the gun with him, and the police placed the gun and ammunition in the trunk of his car.

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<sup>3</sup> This opinion was essentially unchallenged by other testimony, the individual’s treating psychiatrist and the psychologist not having opined on the issue in their testimony. Rather, both merely reported the individual’s denial that the incident took place. Tr. 251, 331.

With no place to go, the individual drove to a pay phone and tried, unsuccessfully, to reach two friends. Tr. at 378. It was then the individual decided to go to the DOE facility.

I didn't go to a hotel because I needed to find someplace that I could leave the gun and feel safe, because to just take it to a hotel does not provide an environment for me to lock it up and secure it.

It means that I'm going to have to carry it in my car. It means that the next day, if I still have the weapon, I can't leave it in the hotel, I'm going to have to take it up to [the DOE facility] or find somebody else later on to do it.

So I -- after thinking about it for a few minutes, I decided the best thing I could do is to drive up to the [DOE facility] and get to my phone books. I didn't have a cell phone, I had no way of reaching out and getting the phone numbers of the people that I needed to contact, and so up at the [DOE facility], it would afford me a point of communication and a way to reach out and seek assistance.

Tr. at 378-79; see Tr. at 443 ("it was going to be a better outcome if I was caught with the gun on lab property than if I left the gun somewhere and they hurt themselves or hurt somebody else with it.").

The lack of judgment displayed by taking a prohibited weapon and ammunition to a DOE facility is self-evident, and the individual acknowledged at the hearing that doing so was "completely irrational." Tr. at 441. Making matters worse is the individual's admission that, when he was at the DOE facility, he lied when his team leader called and asked him directly whether he was on DOE property with a gun.

And that's where I lied, I told her, no, that I did not have a weapon, and the reason I told her that, no, I did not have a weapon, was I needed time to get things squared away to get off property.

It was going to be much worse for me if [site security] came over and picked me up with that weapon than if it was after the fact. So I got off the property as quickly as I could.

Tr. at 383-84.

Regarding whether these irrational acts were caused by the individual's mental illness, the expert testimony ranges from somewhat ambiguous in the case of the individual's treating psychiatrist, Tr. at 474-75, to the DOE consultant psychiatrist's opinion that this behavior was the product of a mental disorder. Tr. at 250. While the psychologist who evaluated the individual did not opine on this issue specifically, I do note that the individual's behavior in this instance appears consistent with the psychologist's finding in his February 5, 2007 report of

indications in the Rorschach of a tendency on [the individual]'s part to overvalue his personal worth and to become preoccupied with his own needs at the expense [of] the needs of others. In addition to these narcissistic like traits, he may exhibit a sense of

entitlement or a tendency to externalize blame and responsibility. At the same time, however, it should be noted that [the individual] is experiencing self-critical attitudes related to a relatively recent feeling of regret or remorse. That being the case, it would appear likely that he is reevaluating his tendency to overvalue his personal worth in the light of this current reality.

Individual's Exhibit A; *see* Tr. at 234 ("I tried to qualify that by showing that there were other traits that suggested that this was not some type of primary narcissistic process, but rather more likely the kind of self-centered behavior we see with chronically ill people who take a turn for the inward and tend to worry an awful lot about themselves and tend to be overly concerned about their own situations, . . ."). Considering all of the expert testimony, I conclude that the individual's clear lapse of judgment in bringing a gun onto DOE property and lying about it was at least in part a product of the individual's mental illness.

Based on the undisputed facts in this case and my findings above regarding the facts that are in dispute, I conclude that the behavior of the individual discussed above (with the exception of the events of July 23, 2005) raises clear security concerns and that this behavior is the product of a mental illness. As such, DOE local had ample basis for invoking Criterion H in the present case, whether the illness is classified as a mood disorder or a personality disorder.

#### ***B. Whether the Security Concern Has Been Resolved***

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

I find that, of the factors above, the determinative one in the present case is "the likelihood of continuation or recurrence," that is, whether the individual's mental illness will in the future manifest itself in lapses of judgment or reliability similar to those that have occurred in the past. When I put the question of the risk of future defects in judgment or reliability to the experts who testified at the hearing, the DOE consultant psychiatrist responded that he saw a "medium risk," Tr. at 256, the

psychologist stated that he saw “a low probability,” *id.*, and the psychiatrist who treated the individual from 2004 to 2006 testified that “there is low risk, . . .” Tr. at 310. Clearly, some risk is inevitable, and the question becomes what degree of risk is acceptable. For the reasons discussed below, in the present case I find that the risk of future lapses in judgment or reliability by the individual is not low enough to justify restoration of access authorization.

In the discussion above of the security concerns raised in this case, I noted that the defects in judgment and reliability exhibited by the individual in the past raise valid security concerns, regardless of the particular category of the mental illness that caused them. However, the particular diagnosis becomes somewhat more important when considering the prognosis for the control of future symptoms of the illness. Thus, as noted by the DOE consultant psychiatrist, a mood disorder “would more likely respond to medications and medications would almost certainly be indicated. Borderline personality disorder does not typically respond very well to medications and typically responds well to long-term psychotherapy.” Tr. at 128; *see also* Tr. at 154-55.

Considering all of the expert testimony presented at the hearing, and the expert opinions in the file from past evaluations, I am persuaded that it is more likely that the individual suffers from a mood disorder rather than a personality disorder. First, the DOE consultant psychiatrist’s opinion is clearly the outlier among many diagnoses that have been made of the individual over the years, including a diagnosis of Major Depressive Disorder and Cyclothymic Disorder by a previous DOE consultant psychiatrist in 2001. DOE Exhibit 5. Second, I found convincing the testimony of the psychologist and the treating psychiatrist that the characteristics diagnosed by the DOE psychiatrist as Borderline Personality traits would need to be more severe to merit that diagnosis. Tr. at 188, 284. Finally, as the DOE consultant psychiatrist graciously acknowledged in his testimony,

I think the main thing that would make me question my diagnosis would be the thing that [the treating psychiatrist] said, is he kind of lived with the patient, treated him for two years. That, off the bat, would give him more weight than me, in general.

I’m still saying I kind of agree with my diagnosis, of course partly because now it’s, quote, my diagnosis, but the thing most persuasive, I think, is he was there for -- with him for two years, and that has a strong -- strong weight to it.

Although I didn’t give him a full diagnosis of borderline personality disorder, I agree he’s not a typical flaming borderline personality disorder where every week you’re getting a call in the middle of the night and cutting themselves and all that, but I still think . . . my diagnosis would stand up.

Tr. at 309.

If the individual only suffers from a mood disorder, this would bode well for him, assuming that his symptoms responded well to medication. However, the individual’s history of trying anti-depressant medications has been disappointing in that he either does not respond to the prescribed medication or he does respond but also suffers intolerable side effects. The individual testified that he had responded well to Wellbutrin, but stopped taking this medication in 2003 after suffering a seizure to which it was determined the medication contributed. Tr. at 390-91. Prior to that, he had “tried Zoloft and Paxil and another SSRI that I don’t remember, and all they did was seem to depress me



more. They had tried Elavil, amitriptyline, which is a tricyclic, and it seemed to depress me more.” Tr. at 344. The psychiatrist who treated the individual from 2004 to 2006 testified that the individual “had been given a pretty good trial of what are called SSRIs, standard antidepressant medications, with not much -- not a whole lot of dramatic effect.” Tr. at 261. As a result, the individual stopped taking his most recently prescribed anti-depressant, Depakote, seven or eight months prior to the hearing. Tr. at 302-06. Without an effective medication to control the individual’s symptoms, I am not convinced that the kinds of incidents caused by the individual’s mental illness in the past will not recur.<sup>4</sup>

### **III. Conclusion**

For the reasons set forth above, I find that there is evidence that raises a substantial doubt regarding the individual’s eligibility for a security clearance. Moreover, I find that the concern raised by that evidence has not been sufficiently resolved such that, “after consideration of all the relevant information, favorable and unfavorable,” I can conclude that restoring the individual’s “access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. §§ 710.7(a), 710.27(a). The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: October 18, 2007

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<sup>4</sup> My concern is compounded by the fact that the individual does not appear to have taken full responsibility for his past actions, to the point of denying the allegation of spreading a virus, an allegation that I find is likely true. And in those cases where he admits to have made statements that are, on their face, threats of suicide, he seems to admit them reluctantly or else characterizes those statements as much more benign than even his own past reports of the same. For example, regarding his statement of preferring suicide to accepting a divorce, he explained at his 2000 Personnel Security Interview that he had seen children of divorced parents suffer and believed that it would be “easier for them if they were caught in the middle [to] have just one parent around than be pulled and split between two.” DOE Exhibit 9 at 16. Unlike in that interview, where there was no mention of the word suicide being used metaphorically, he offered a more innocent, and less credible, explanation at the hearing in this case: “That’s a metaphor. The metaphor of divorce and suicide.” Tr. at 413. This came shortly after the individually emphatically testified that, “I have never said that, ‘If this happens, I’m going to commit suicide. . . ,’” before being reminded of his own 2000 admission of his prior statement, “I won’t accept the divorce. I’ll take my life first.” Tr. at 412-13.